VZCZCXRO2717
PP RUEHTRO
DE RUEHTU #0140/01 0301645
ZNR UUUUU ZZH
P 301645Z JAN 07
FM AMEMBASSY TUNIS
TO RUEHC/SECSTATE WASHDC PRIORITY 2591
INFO RUEHAD/AMEMBASSY ABU DHABI PRIORITY 0840
RUEHAS/AMEMBASSY ALGIERS PRIORITY 7401
RUEHLO/AMEMBASSY LONDON PRIORITY 1246
RUEHNK/AMEMBASSY NOUAKCHOTT PRIORITY 0840
RUEHFR/AMEMBASSY PARIS PRIORITY 1705
RUEHRB/AMEMBASSY RABAT PRIORITY 8302
RUEHTRO/AMEMBASSY TRIPOLI PRIORITY 0033
RUEHCL/AMCONSUL CASABLANCA PRIORITY 4046
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY
RUCPDOC/USDOC WASHDC PRIORITY
RUCPCIM/CIMS NTDB WASHDC PRIORITY

UNCLAS SECTION 01 OF 04 TUNIS 000140

SIPDIS

SIPDIS

STATE FOR NEA/MAG (HARRIS) AND EB/IFD/OIA (HATCHER AND KAMBARA)
STATE PASS USTR (BELL), USPTO (ADLIN AND ADAMS), USAID (MCCLOUD)
USDOC FOR ITA/MAC/ONE (NATHAN MASON), ADVOCACY CTR (JAMES), AND CLDP
(TEJTEL)
CASABLANCA FOR FCS (ORTIZ)
LONDON AND PARIS FOR NEA WATCHER

E.O. 12958: N/A
TAGS: EINV EFIN ETRD ELAB KTDB OPIC USTR TS
SUBJECT: TUNISIA: INVESTMENT CLIMATE STATEMENT 2007

REF: 06 STATE 178303

PART I

¶1. Tunisia's 2007 Investment Climate Statement. Topics covered include:

Openness to Foreign Investment

¶2. The Tunisian government actively encourages selected foreign direct investment (FDI), particularly for export-oriented industries. It screens potential FDI to minimize the impact of the investment on domestic competitors and employment.

¶3. Total FDI in Tunisia is estimated at about US $19 billion. It has contributed to the creation of over 2,765 companies and approximately 268,000 jobs. Foreign investment in manufacturing industries producing for export has long been the major generator of jobs in Tunisia and has attracted the bulk of FDI. In 2006, FDI totaled US $921 million, compared to about 750 million in 2005.

¶4. Until recently the Government discouraged foreign investment in service sectors such as restaurants, real estate, and retail

distribution, but there are signs of relaxation of this policy. In particular, FDI in retail distribution is expanding rapidly. French multinational retail chain Carrefour opened its first store in 2001, followed by the entry of French retail company Geant in 2005. There has also been major Persian Gulf investment in the real estate sector. Tunisian law does not authorize franchising as the rule but it tolerates, on case by case basis, labor intensive franchising projects that could increase job creation.

¶5. The 2002 sale of the country?s first private GSM cell phone license to Egypt's Orascom underlined Tunisia?s commitment to WTO to open up telecommunications to foreign investment. In July 2006, TECOM Investments and Dubai Investment Group (DIG) purchased a 35 per cent stake, valued at US $2.25 billion, in state-owned Tunisie Telecom. Major FDI has also entered the financial sector via the partial privatization of the UIB (Union Internationale de Banques) in 2002, when 52 percent of its capital was sold to France?s Societe Generale. The privatization of Banque du Sud, recently renamed Attijari Bank, was completed in late 2005. The Spanish/Moroccan consortium, which paid approximately US $45 million for the state?s 34 percent share of the bank?s capital, gained majority control of the bank when it also purchased a 17 percent block of shares from a private Tunisian group.

¶6. Foreign investment in Tunisia is regulated by the Investment Code Law No. 93-120, dating from December 1993. It covers investment in all major sectors of economic activity except mining, energy, the financial sector and domestic trade.

¶7. The Tunisian Investment Code divides potential investments into two categories: (1) Offshore, in which foreign capital accounts for at least 66 percent of equity and at least 80percent of production is destined for the export market, and (2) On-shore, in which foreign equity is limited to 49 percent in most non-industrial projects.

(On-shore industrial investment can have up to 100 percent foreign equity).

¶8. The legislation contains two major hurdles for potential FDI: (1) Foreign investors are denied national treatment in the agriculture sector. Foreign ownership of agricultural land is prohibited, although land can be secured through long-term (up to 40 years) lease. However, the Government actively promotes foreign investment in agricultural export projects. (2) For onshore companies outside the tourism sector, government authorization is required if the foreign capital share exceeds 49 percent.

¶9. Investment in manufacturing industries, agriculture, agribusiness, public works, and certain services requires only a simple declaration of intent to invest. Other sectors can require a series of Government of Tunisia authorizations.

¶10. FDI in certain state monopoly activities (electricity, water, postal services) can be carried out following establishment of a concession agreement. There are also certain restrictions on trade activities. With few exceptions, domestic trading can only be carried out by a company set up under Tunisian law, in which the majority of the share capital is held by Tunisians and management is Tunisian. An additional barrier to non-EU investment results from Tunisia?s Association Agreement with the European Union. The EU is providing significant funding to Tunisia for major investment but clauses in the agreement prohibit non-EU member countries from participation in many EU-funded projects.

¶11. A large share of Tunisia?s FDI in recent years has come from a privatization program to sell off state-owned or state-controlled enterprises. The program began in 1987 with the sale of the smallest and least viable public sector enterprises, but has since included major state assets. Enterprises currently involved in the privatization process include Tunisie Telecom, the government telecommunications service. Tenders have also been launched for the partial sale of the national petroleum distribution company (SNDP) and the state automobile manufacturer (STIA). The planned sale of a 76.3 percent stake in Magasin General, the Government of Tunisia?s 43-store supermarket chain, is ongoing. As the Government of Tunisia?s privatization program slows down, Tunisia will no longer receive large

amounts of FDI from the privatization of state assets and maintaining current FDI levels may become a challenge.

¶12. The Ministry of Development and International Cooperation and the Foreign Investment Promotion Agency (FIPA) Tunisia hold an annual investment promotion event, the Carthage Investment Forum, to introduce the Tunisian investment environment and its business opportunities to global investors. The 8th Forum was held on June 15-16, 2006.

¶13. There is no evidence of consistent discrimination against foreign investors either at the time of initial investment or at a later stage. The GOT?s investment promotion authorities have established a system of regulations that has received favorable feed back from the US companies it has assisted. A US investor in electricity production successfully lobbied for a change in Government of Tunisia legislation which permitted the investment to proceed. Another US investor received Government of Tunisia support in a dispute over the application of Investment Code incentives. A major ?greenfield? investment in manufacturing has been completed and is operational. The US investor has warmly praised FIPA for its continuing support from the outset of the project.

¶14. Nevertheless, there are difficulties, particularly when US companies have attempted to launch projects in sectors which the Government of Tunisia does not actively promote.

¶15. Tunisia?s largest single foreign investor is British Gas, which has developed the Miskar offshore gas field (US $650 million) and is investing a further US $500 million for new development. Major foreign presence in other key sectors include telecommunications and electronics (Lucent, Alcatel, Ericsson, Siemens, Sony, Philips, Thomson, Huwaei, ZTE), the automotive industry (Lear Corporation, Isuzu, Pirelli, Fiat, Idec), and food products (Nestle, Danone, Chambourcy). Major US company presence in Tunisia includes: Lear

Corporation, Citibank, Exxon/Mobil, Pfizer, Merck, Microsoft, General Motors, Coca-Cola, Ford, Sara Lee (represented in Tunisia under the name of Essel Tunisie / DBA), Sylvania, Stream, Crown Can, Johnson Controls, and Eurocast (a joint venture with Palmer). EVOL, originally part of an Italian-owned group producing safety footwear for the export market, was recently purchased by US investors and, with a staff of 4,000, is now the largest US employer in Tunisia. In 2006, a second US shoemaker, ALTEK, opened a plant in Tunisia, and Hewlett Packard opened a hardware support call center. US investors also recently purchased the Lee Cooper jean manufacturing plants originally under UK/Tunisian ownership.

Conversion and Transfer Policies

¶16. The Tunisian dinar is not a fully convertible currency, and it is illegal to take dinars in or out of the country. Although it is convertible for current account transactions (i.e. most bona fide trade and investment operations), Central Bank authorization is needed for some foreign exchange operations. The Government of Tunisia predicts full convertibility of the dinar is not likely before 2009.

¶17. Nonresidents are exempt from most exchange regulations. Under foreign currency regulations, nonresident companies are defined as having: (1) Nonresident individuals who own at least 66 percent of the capital, and (2) capital financed by imported foreign currency.

¶18. Foreign investors may transfer returns on direct or portfolio investments at any time and without prior authorization. This applies to both principal and capital in the form of dividends or interest. US companies have praised the speed of transfers to outside Tunisia, but lamented inexplicably long delays in some operations.

¶19. There is no limit to the amount of foreign currency that visitors can bring into Tunisia and exchange for Tunisian dinars. Amounts exceeding the equivalent of 1,000 Tunisian dinars (approximately US $800) must be declared at the port of entry. The unused balance of such foreign currency may be taken out of the country. Tunisian customs authorities may require production of currency exchange

receipts on exit.

¶20. The dinar is traded on an intra-bank market. Trading operates around a managed float established by the Central Bank (based upon a basket of the Euro, the US dollar and the Japanese yen). The dollar/dinar value fluctuates on a daily basis, with the dollar trading most recently (December 2006) at approximately 1.3 TND. In 2006, the TND appreciated roughly 4.4 percent against the US dollar and depreciated 5.4 percent against the Euro.

Expropriation and Compensation

¶21. The Tunisian government does expropriate property by eminent domain; there is no evidence of consistent discrimination against US and foreign companies or individuals. There are no outstanding expropriation cases involving US interests and such cases are rare. No policy changes on expropriation are anticipated in the coming year.

Dispute Settlement

¶22. There is no pattern of significant investment disputes or discrimination involving US or other foreign investors. However, to avoid misunderstandings, contracts for trade and investment projects should always contain a clause detailing how eventual disputes should be handled and the applicable jurisdiction. Tunisia is a member of the International Center for the Settlement of Investment Disputes and is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

¶23. The Tunisian legal system is based upon the French Napoleonic code. There are adequate means to enforce property and contractual rights.

Although the Tunisian constitution guarantees the independence of the judiciary, the judiciary is not fully independent of the executive branch. Local legal experts assert that courts are susceptible to political pressure.

¶24. The Tunisian Code of Civil and Commercial Procedures does allow for the enforcement of foreign court decisions under certain circumstances. Commercial disputes involving US firms are relatively rare. Several US firms have successfully sought patent and trademark protection through the Tunisian courts. Although the concept and application of intellectual property protection is still in the early stages, the Government is making an effort to build awareness. A US government-backed initiative, operated by the Department of Commerce in conjunction with United States Patent and Trademark Office (USPTO) has launched a program to train Tunisian decision makers in the field of IPR regulation enforcement.

PART II continues with paragraph 25, septel
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